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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,574	01/25/2002	Jordan C. Bonney	1032-003US01	1809
28863	7590	07/08/2005	EXAMINER	
SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			ENG, DAVID Y	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,574

Applicant(s)

BONNEY ET AL.

Examiner

DAVID Y. ENG

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

A new abstract that is more aptly descriptive of the invention claimed is requested. There is no description of any improvement in monitoring and testing of computer network by the agents and the reply modules.

Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Scope of the claims is not clear. No meaningful improvement or result is seen from the claims. The agents are recited to receive a lot of information such as reply data, commands, a set of triggers, etc. There is no meaningful operation recited to be performed by the agents in response to the information received.

There is not functional relationship between the method steps. See claims 1 and 2 for examples. The steps in claim 1 have no functional relationship with the steps of claim 2.

It is not clear in what order the steps are executed. Again see claims 1 and 2 for example. It is not clear in what order the steps of claims 1 and 2 are executed.

The apparatus claims and the medium claims have similar defects.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller (USP 6,625,648).

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With respect to claims 1, 5, 21, 29, 32 and 39, see the abstract, lines 5 of column 3 to line 2 of column 5, Figures 1-3 and 5-6 and the description thereof in Schwaller.

Schwaller teaches:

a method (see “—method, systems and computer program products—” in line 1 of the abstract) comprising:

communicating replay data (test agents and applications are provided to the endpoint nodes, see the abstract) to a plurality of agents (see “endpoint nodes” in the abstract and Figures 1 and 2) coupled to a computing network (see network in line 2 of the abstract and Figures 1 and 2), wherein the replay data includes one or more network packets (network inherently communicates in packets); and

issuing commands (see “—scheduling instructions from the console node--” in line 10 of the abstract) to the agents to control introduction of the network packets on the computing network by the agents (see “—the agents may generate network performance information—” in line 7-8 of the abstract).

The only difference is that Schwaller does not label the data as replay data. No patentable weight is given to the data labeled as replay because there is no replay operation recited in the claims. It would have been obvious to a person of ordinary skill in the art to give a label to the data in accordance with the purported use of the data so as to differentiate the data from other data.

With respect to claims 2-4, 6-10, see the different embodiments in columns 3 and 4, different types of tests are sent to the endpoint nodes for testing the network.

With respect to claims 11-16, console node of Schwaller collects test results. See at least lines 52 et seq. of column 3. How exactly the collected data is arranged and presented to a user is dependent on the preference of the user.

With respect to claims 17-20, different types of tests are input by the user of console node in Schwaller.

As to claims 22-28, 30-31 33-38 and 40-45, they do not define above the invention claimed in claim 2-20 and therefore are rejected for the same reasons.

A handwritten signature in black ink, appearing to read 'David Y. Eng', with a stylized, flowing script.

DAVID Y. ENG
PRIMARY EXAMINER